

Message Text

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TO AMEMBASSY PARIS IMMEDIATE

AMEMBASSY STOCKHOLM IMMEDIATE

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E.O. 11652: N/A

TAGS: ETRD, OECD, FR, SW

SUBJECT: FTC ANTITRUST INVESTIGATION INVOLVING SKF
INDUSTRIES

REF: STOCKHOLM 5831

-- FOR US MISSION OECD ASSISTANT SECRETARY ENDERS

1. DEPARTMENT HAS RECEIVED AN AIDE MEMOIRE DATED
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NOVEMBER 20 FROM THE SWEDISH EMBASSY (FULL TEXT BELOW)

REGARDING THE FEDERAL TRADE COMMISSION (FTC) COMPLAINT AGAINST THE SWEDISH CORPORATION, SVENSKA KULLAGERFABRIKEN (AB SKF), ITS U.S. SUBSIDIARY SKF INDUSTRIES, INC., AND THE U.S. FIRM, FEDERAL-MOGUL CORPORATION. (FOR INFORMATION REGARDING THE COMPLAINT AND PRESENT STATUS SEE BP'S MEMO OF NOVEMBER 14.)

2. THE AIDE MEMOIRE MAKES TWO PRINCIPAL ALLEGATIONS:

-- A. SKF INDUSTRIES OVERALL SHARE OF THE U.S. BEARING MARKET IS ONLY NINE (9) PERCENT. OTHER FIRMS HOLD MUCH HIGHER SHARES DEPENDING UPON THE PARTICULAR TYPE OF BEARING. THUS, THE ACQUISITIONS OF TWO U.S. BEARING MANUFACTURERS, NICE AND TYSON, BY SKF INDUSTRIES AND OTHER OPERATIONS OF SKF COULD BE INTERPRETED TO BE BENEFICIAL TO THE COMPETITIVE SITUATION IN THE U.S. MARKET RATHER THAN PREJUDICIAL.

-- B. ONE ASPECT OF THE CONTEMPLATED RELIEF WHICH WOULD IMPOSE A 10-YEAR BAN ON AB SKF MERGERS WITH MANUFACTURERS OUTSIDE THE UNITED STATES BUT WHICH SELL BEARINGS IN THE UNITED STATES WOULD AMOUNT TO EXTRATERRITORIAL JURISDICTION BY THE FTC.

3. TALKING POINTS:

-- A. THE SWEDISH EMBASSY'S AIDE MEMOIRE OF NOVEMBER 20 HAS BEEN GIVEN BY THE DEPARTMENT TO THE FEDERAL TRADE COMMISSION FOR ITS INFORMATION AND CONSIDERATION.

-- B. SINCE THE SKF CASE IS UNDER ADJUDICATION BEFORE THE FTC AND WE HAVE NOT HAD AN OPPORTUNITY TO STUDY THE CASE, WE ARE NOT REPEAT NOT IN A POSITION TO DISCUSS THE SUBSTANCE OF THE CASE.

-- C. HOWEVER, THERE IS A PROCEDURAL POINT WHICH MAY BE MADE WITH RESPECT TO THE SWEDISH EMBASSY'S ALLEGATION OF EXTRATERRITORIAL JURISDICTION BY THE FTC. (SEE FINAL PARAGRAPH OF SWEDISH AIDE MEMOIRE.) THIS CONTEMPLATED RELIEF IS NOT WHOLLY "EXTRATERRITORIAL" BECAUSE IT IS BASED ON EFFECTS ON THE U.S. MARKET AND, IN ANY EVENT, IT IS A PRO-LIMITED OFFICIAL USE

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POSAL REPEAT PROPOSAL BY THE COUNSEL FOR THE FTC WHICH CAN BE CHANGED AT ANY TIME DURING THE PROCEEDINGS.

4. FULL TEXT OF SWEDISH EMBASSY AIDE MEMOIRE:

QUOTE. THE FEDERAL TRADE COMMISSION ON THE 22ND OF JULY 1975 ISSUED AN ANTITRUST COMPLAINT AGAINST THE SWEDISH CORPORATION SVENSKA KULLAGERFABRIKEN (AB SKF), ITS SUBSIDI-

ARY IN THE UNITED STATES, SKF INDUSTRIES INC. AND THE US FIRM FEDERAL-MOGUL CORPORATION. THE THREE CORPORATIONS ARE MANUFACTURERS OF BALL BEARINGS AND TAPER ROLLING BEARINGS.

"THE FEDERAL TRADE COMMISSION CHARGES THAT THE ACQUISITION IN 1955 OF THE TYSON BEARING CORPORATION AND IN 1960 OF THE NICE BALL BEARING COMPANY BY SKF, AS WELL AS THE SUBSEQUENT ACQUISITIONS OF FOREIGN BEARING COMPANIES IN FRANCE, THE FEDERAL REPUBLIC OF GERMANY, ITALY, SPAIN AND AUSTRALIA, INDIVIDUALLY OR TAKEN AS A WHOLE CONSTITUTE AN UNFAIR METHOD OF COMPETITION IN THAT SUBSTANTIAL ACTUAL OR POTENTIAL COMPETITION BETWEEN AND AMONG AB SKF, TYSON, NICE AND OTHERS IN THE MANUFACTURE AND SALE OF BALL AND TAPER ROLLING BEARINGS HAS BEEN ELIMINATED.

"THE COMMISSION DELIVERED ITS WRITTEN CONSENT TO THE ACQUISITIONS OF NICE AND TYSON BY SKF IN 1957 AND 1962, RESPECTIVELY. THE ONLY ACTUAL MERGER OF ANY SIGNIFICANCE IN EUROPE OCCURED IN 1965, WHEN, ON ITS OWN INITIATIVE, THE ITALIAN COMPANY RIV JOINED SKF. THE ECONOMIC SITUATION OF RIV WAS UNFAVOURABLE AT THE TIME AND THE MERGER WAS MADE WITH THE APPROVAL OF THE LOCAL AUTHORITIES AND WITH THE TACIT CONSENT OF THE BRUSSELS COMMISSION. SUBSEQUENTLY, ALSO SKF'S INTERNAL ARRANGEMENTS WITH RIV OBTAINED OFFICIALLY NEGATIVE CLEARANCE UNDER THE ROME TREATY.

"THE FEDERAL TRADE COMMISSION ALSO CHARGES THAT SKF INDUSTRIES' DISCONTINUANCE OF ITS MARKETING OF BEARINGS TO THE AUTOMOTIVE AFTERMARKET AND ITS AGREEMENT WITH FEDERAL-MOGUL CORPORATION IN 1972, WHEREBY SKF INDUSTRIES PROMISED TO SELL TAPER ROLLING BEARINGS AND OTHER BEARINGS TO FEDERAL-MOGUL FOR RESALE TO THE SAID MARKET, HAS ELIMINATED OFFICIAL USE

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ED FEDERAL-MOGUL AS A POTENTIAL PURCHASER FROM OTHER MANUFACTURERS, AS WELL AS SKF INDUSTRIES AS A COMPETITOR ON THE AUTOMOTIVE AFTERMARKET, AND THEREFORE CONSTITUTES AN UNFAIR METHOD OF COMPETITION.

"THE SAID ARRANGEMENT WAS BROUGHT TO THE KNOWLEDGE OF THE FEDERAL TRADE COMMISSION IN 1972.

"THE COMMISSION NOW CONTEMPLATES THE FOLLOWING KINDS OF RELIEF:

'1. DIVESTITURE OF TYSON AND NICE BY SKF INDUSTRIES.

'2. A TEN YEAR PROHIBITION ON ANY DEALINGS BETWEEN AB SKF, INCLUDING SKF INDUSTRIES, AND FEDERAL-MOGUL WITHOUT

PRIOR APPROVAL OF THE FEDERAL TRADE COMMISSION AND CANCELLATION OF ALL CURRENTLY EXISTING AGREEMENTS, UNDERSTANDINGS OR CONTRACTS BETWEEN THEM.

'3, A TEN YEAR BAN ON ACQUISITIONS BY AB SKF OR SKF INDUSTRIES, WITHOUT PRIOR APPROVAL OF THE FEDERAL TRADE COMMISSION, OF ANY FIRM MANUFACTURING BALL OR TAPER ROLLING BEARINGS AND WITH SALES IN THE UNITED STATES.

"NEGOTIATIONS BETWEEN AB SKF AND THE COMMISSION OPENED ON THE 5TH OF NOVEMBER 1975.

"THE SWEDISH GOVERNMENT CONSIDERS THE COMPLAINT AMBIGUOUS AND HIGHLY REGRETTABLE IN TWO MAIN RESPECTS:

FIRST ACCORDING TO FIGURES AVAILABLE TO THE SWEDISH GOVERNMENT, AB SKF IN EACH CLASS OF BEARINGS (THE SOLE EXCEPTION BEING THAT OF SPHERICAL BEARINGS) COMPETES WITH

MANUFACTURERS WHICH OWING TO SPECIALIZATION HAVE LARGER SHARES OF THE WORLD MARKET IN RESPECT OF SUCH BEARINGS. FOR EXAMPLE, APPROXIMATELY 41 PERCENT OF THE WORLD MARKET OF TAPER ROLLING BEARINGS IS CONTROLLED BY THE AMERICAN BEARING MANUFACTURER TIMKEN, WHICH WHOLLY SPECIALIZES IN THE PRODUCTION OF SUCH BEARINGS.
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'IN THE LARGE INDUSTRIAL MARKETS IN EUROPE, SAVE FOR FRANCE, ITALY AND SWEDEN, SKF IS NOT EVEN THE BIGGEST LOCAL MANUFACTURER OF BEARINGS.

'AS REGARDS THE US MARKET SKF INDUSTRIES' OVERALL SHARE IS 9 PERCENT. IN THE "US BALL BEARING MARKET" SKF INDUSTRIES' SHARE IS 8 PERCENT, WHILE JAPANESE CORPORATIONS HOLD TOGETHER APPROXIMATELY 20 PERCENT WITH A CONCENTRATION ON HIGH VOLUME STANDARD BALL BEARINGS, FOR WHICH THEY ARE DOMINATING THE MARKET. IMPORTANT LOCAL COMPETITORS ARE THE GENERAL MOTOR SUBSIDIARY NEW DEPARTURE HYATT (20 PERCENT) AND FAFNIR (10 PERCENT). THE SKF INDUSTRIES' SHARE OF THE BALL BEARING MARKET IS NOW LOWER THAN IT WAS AT THE TIME OF THE ACQUISITION OF NICE BALL BEARING COMPANY IN 1961.

'IN THE "US TAPER ROLLING BEARING MARKET" THE SKF INDUSTRIES' SHARE IS ABOUT 6 PERCENT. TIMKEN HOLDS A CLEARLY DOMINANT POSITION WITH A 66 PERCENT MARKET SHARE AND IMPORTANT LOCAL COMPETITORS ARE NEW DEPARTMENT HYATT (10 PERCENT) AND FEDERAL-MOGUL (6 PERCENT).

'AS SKF INDUSTRIES IS A SUBSIDIARY OF AB SKF AND CONSEQUENTLY A SWEDISH INVESTMENT IN THE US, IT SEEMS APPROPRIATE TO MAKE SOME OBSERVATIONS ABOUT THE COMPLAINTS AGAINST THE SAID COMPANY. FROM THE ABOVE STATISTICS IT SEEMS A BIT DUBIOUS THAT THE ACQUISITION OF NICE BY SKF INDUSTRIES HAS ELIMINATED ANY SUBSTANTIAL COMPETITION.

'FURTHERMORE, THE PREDOMINANCE OF TIMKEN MAKES IT ALSO EXTREMELY DIFFICULT TO COMPREHEND THAT SKF INDUSTRIES' ACQUISITION IN 1955 OF TYSON OR EVEN THE COMBINED MARKET SHARES OF SKF INDUSTRIES AND FEDERAL-MOGUL REPRESENT ANY SUBSTANTIAL THREAT TO THE OVERALL COMPETITION ON THE TAPER ROLLING BEARING MARKET.

'THE COMPETITIVE SITUATION AND THE SKF INDUSTRIES MARKET STANDING IN THE UNITED STATES COULD THUS MUCH MORE EASILY BE INTERPRETED AS BENEFICIAL TO FEDERAL AMERICAN ANTI-TRUST OBJECTIVES THAN THE OPPOSITE. THE FEDERAL TRADE LIMITED OFFICIAL USE

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COMMISSIONS COMPLAINT IN THE VIEW OF THE SWEDISH GOVERNMENT COULD, THEREFORE, ALSO BE CONSIDERED AS COUNTER-PRODUCTIVE.

'SECONDLY, AND LAST BUT NOT LEAST, A DETERMINATION OF THE FEDERAL TRADE COMMISSION IN LINE WITH ITS NOTICE OF CONTEMPLATED RELIEF WOULD CONTAIN A BAN ON AB SKF TO MERGE WITH MANUFACTURERS OUTSIDE THE UNITED STATES BUT WITH SALES TO THE AMERICAN MARKET, WITHOUT PRIOR APPROVAL OF THE COMMISSION. THIS WOULD BE EQUAL TO AN EXTRATERRITORIAL JURISDICTION BY A US FEDERAL AGENCY TO WHICH THE SWEDISH GOVERNMENT WOULD RAISE ITS SERIOUS OBJECTIONS.'" KISSINGER

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